IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 9TH MARCH 2007 / 18TH PHALGUNA 1928

WP(C).No. 7875 of 2007(K)

CRA.144/2007 of D.C. & SESSIONS COURT, ERNAKULAM

.....

PETITIONER:

JOHNY THOMAS, AGED 48,
S/O.EYO THOMAS, PATTUPARAMBIL HOUSE,
ETTUKARRU TEMPLE ROAD, ELAMAKARA,
ERNAKULAM DISTRICT.

BY ADV. SRI.SHAJI CHIRAYATH
SMT.JIJI M. VARKEY

RESPONDENTS:

---

1. T.R.THOMAS, THOTTIYIL HOUSE,
AZAD ROAD, ERNAKULAM DISTRICT,
PIN-682 017.

2. STATE OF KERALA, REPRESENTED BY
THE DIRECTOR GENERAL OF PROSECUTIONS,
HIGH COURT OF KERALA, ERNAKULAM DISTRICT.

BY G.P. SRI.S.U. NAZAR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 09/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

R. BASANT, J.

W.P.(C) NO. 7875 OF 2007

Dated this the 9th day of March, 2007

JUDGMENT

The petitioner has been found guilty, convicted and sentenced in a prosecution under Sec.138 of the Negotiable Instruments Act. He preferred an appeal before the learned Sessions Judge. As there were some defects in the appeal, it was returned for re-presentation. The petitioner did not re-present the appeal in time. He re-presented it later along with an application for condonation of delay. In that application, the learned Sessions Judge appears to have issued notice to the respondent and posted the case to 16/3/07. The delay in re-presentation has not been condoned. The appeal has not been admitted. The suspension petition has not been taken up for consideration. In the meantime, the complainant is making feverish attempts to get the sentence executed. The petitioner does not have any other avenue to seek redressal. He has therefore rushed to this Court with this writ petition under Art.227 of the Constitution.

2. Normally, it is not essential that notice must be

ordered invariably in all the applications for condonation of delay in re-presentation. I must assume that the learned Sessions Judge had valid reasons to order notice in such an application for condonation of delay in this case. However, the learned Sessions Judge must scrupulously ensure that the petitioner is not put to any embarrassment or prejudice by the delay in consideration of such application for condonation of delay.

3. The situation is extraordinary and I am satisfied that it will be appropriate for this Court now to invoke its powers under Art.227 of the Constitution and grand succour to the petitioner. In these circumstances, the following directions are issued.

(i) The petitioner shall appear before the learned Sessions Judge on 16/3/2007.

(ii) The learned Sessions Judge shall consider and pass appropriate orders on the application for condonation of delay in re-presentation and if the appeal is admitted, pass appropriate orders on the application for suspension within a period of 10 days from 16/3/07.

(iii) The sentence shall not be executed by the trial court before the learned Sessions Judge passes appropriate orders on

the application for condonation of delay and the application for suspension on condition that the petitioner executes a bond for Rs.25,000/- before the learned Magistrate within a period of 7 days from this date. I make it clear that the learned Sessions Judge shall be at liberty to impose appropriate conditions for suspension and the fact that I have directed only execution of bond for Rs.25,000/- will not, in any way, fetter the discretions of the learned Sessions Judge while imposing condition for suspension.

Sd/-

(R. BASANT, JUDGE)

HO
Nan/

//true copy//

P.S. to Judge